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1-17-03
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

JAN 16 2003

JAMES DAVID WHITMAN,
Plaintiff

MARY E. D'ANDREA, CLERK
per *[Signature]*

vs.

CIVIL ACTION NO. 1:CV-01-196
JUDGE KANE

BUCKWALTER CONSTRUCTION
INC.,

Defendant

DEFENDANT'S RESPONSE TO 12/19/02 ORDER TO SHOW CAUSE

Defendant, Buckwalter Construction, Inc., without prejudice to or waiver of its position that this Court is without jurisdiction with respect to the above-captioned matter, and without prejudice to or waiver of its position that it has not been served, submits the following response to the December 19, 2002 Order to Show Cause why the above-captioned matter should not be dismissed.

1. Neither Defendant nor Defendant's counsel ever received a copy of the Summons or Complaint in this matter until Friday, January 10, 2003, at which time a copy was received by certified mail as set forth in the photocopy of the envelope attached hereto as Exhibit "1".
2. The Complaint was filed on January 30, 2001, almost two years prior to the mailing of the Complaint by certified mail.
3. No notice of the commencement of the action or request that the Defendant waive service was in the envelope mailed to Defendant as required by F.R.C.P. 4(d).

4. Plaintiff was responsible under F.R.C.P. 4 for the service of the Summons and the Complaint within 120 days of January 30, 2001.

5. Local Rule of Civil Procedure for the Middle District provides that where the Plaintiff is pro se, service shall be pursuant to F.R.C.P. 4(c)(2), which requires service to be effected by a United States marshal, deputy of the United States marshal, or other person or officer specifically appointed by the Court for that purpose.

6. Delivery by certified mail is not a form of service authorized by the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the Middle District.

7. Plaintiff cites no reason or cause for his failure to serve the Summons and Complaint within the time required.

WHEREFORE, for the above-stated reasons, Defendant submits that Plaintiff has failed to show cause why the above-captioned action should not be dismissed with prejudice, and accordingly, Plaintiff's Complaint should be dismissed.

RUSSELL KRAFFT & GRUBER, LLP

By: 

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Attorney I.D. # 19351

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving Defendant's Response to 12/19/02 Order to Show Cause upon the person and in the manner indicated below which service satisfies the requirements of F.R.C.P. 5:

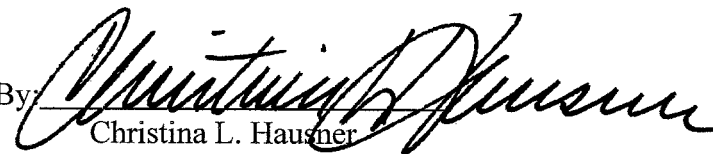
Service by First Class Mail Addressed as Follows:

James David Whitman
1211 East Lehman Street
Lebanon, PA 17046

Dated: January 15, 2003

RUSSELL, KRAFFT & GRUBER, LLP

By:



Christina L. Hausner
Attorney I.D. # 32373

Gary G. Krafft

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